

Advisory Opinion No. 93-16

The Conflicts of Interest Board (the "Board") has received a request for an opinion as to whether Board of Ethics Opinion Nos. 53 and 663 --- which prohibit Tax Commission assessors and, by extension, assessors for the Department of Finance ("Finance"), from owning real property for investment purposes in the City --- continue to have interpretive value under revised Chapter 68 of the City Charter.¹

The Board of Ethics, in its Opinion No. 53, concluded that participation in real estate transactions for profit in the City by a Tax Commission assessor would conflict with his or her official

¹ This Opinion deals solely with ownership of real property for investment purposes, as distinguished from a tax assessor's ownership of his or her personal residence.

Personal residences are accorded special treatment under Chapter 68. In general, a public servant is prohibited from having any interest in a firm engaged in business dealings with his or her agency or, in the case of a regular employee, with the City. See Charter Sections 2604(a)(1)(a) and (a)(1)(b). However, in defining "business dealings with the city", the Charter expressly states that such term "shall not include any transaction involving a public servant's residence". See Charter Section 2601(8).

duties. It was that Board's opinion that an assessor's ownership interest in real property for investment purposes anywhere in the City would create a conflict of interest because the property was under the jurisdiction of the assessor's department; because assessors were subject to reassignment; and because all property assessments were the responsibility of the same department where all the assessors worked side by side.

In its Opinion No. 663, the Board of Ethics was asked to consider whether a member of the New York City Tax Commission could hold, for investment, an interest in private real estate, in light of its previous determination in Opinion No. 53. The Board of Ethics adhered to its original opinion concerning assessors, but modified this view as applied to Tax Commissioners because they were part-time employees and, having been drawn from the private real estate industry, they inevitably had financial interests in taxable real estate. Accordingly, the Board of Ethics determined that a Commissioner could not hear applications for the correction of tax assessments with respect to any parcel that he or she owned and, to that end, Commissioners were required to disclose any ownership interests in real property located in the City.

There is no specific provision of Chapter 68 which would, on its face, prohibit an assessor with Finance from owning real property, for investment purposes, in the City. However, there are several provisions of the City Charter which place conditions and limitations on the ownership of real property by public servants generally, and on certain conduct incidental to such ownership. For example, Charter Section 2604(a)(1)(b) prohibits a regular employee of the City from having an ownership interest in a firm which is engaged in business dealings with the City. "Business dealings" are defined as

[A]ny transaction with the [C]ity involving the sale, purchase, rental, disposition or exchange of any goods, services or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing,

Charter Section 2601(8).

In addition, Charter Sections 2604(b)(2), (b)(3) and (b)(4) prohibit a public servant from engaging in any business or transaction, or having any financial or other private interest, which is in conflict with the proper discharge of his or her official duties; from

using his or her official position to obtain any private or personal advantage for the public servant or for any person or firm associated with the public servant; and from disclosing any confidential information concerning the City, or using any such information to advance any private interest.

In each case, these provisions limit the rights of public servants in terms of owning and investing in real property, but they do not prohibit such activity outright. By way of illustration, under Charter Section 2604(a)(1)(b), a regular employee could not have an ownership interest in a real estate holding company engaged in leasing property to or from the City. He or she could, however, retain an ownership interest in a similar company that had no business dealings with the City, assuming the arrangement posed no other potential conflict of interest under Chapter 68.

In our view, this approach reflects a careful balancing of two competing interests: the need to prevent both actual and potential conflicts of interest, so as to protect the integrity of government decision-making, and the recognition that government cannot attract or retain a qualified workforce by forcing public servants to forgo outside activities or

investments if the risk of divided loyalty or sacrifice of City interests is remote.²

It is the opinion of the Board that the same approach must be applied in dealing with ownership, by City tax assessors, of real property for investment purposes within the City. These public servants play a critical role in defining the City's primary source of revenue. As such, it is imperative that the assessment process be objective, impartial, and free from undue influence. At the same time, however, there are measures that can be utilized to prevent conflicts of interest or the appearance of conflicts of interests, without totally disenfranchising this class of public servants from rights of ownership enjoyed by the public generally, including other employees within City Government. These measures include as a minimum,

(1) requiring City tax assessors to disclose the identity and location of all real property in which they have any ownership interest, both upon entering City service, and upon acquiring any further interests

² This careful balance is also exemplified by Charter Sections 2604(a)(3) and (a)(4), which authorize the Board, in certain cases, to allow a public servant to retain an otherwise prohibited ownership interest in a firm engaged in business dealings with the City.

while employed by the City; and

(2) assigning assessors to work in boroughs where they do not own any property for investment.

It is therefore the Board's opinion that the broad prohibition against a City tax assessor's ownership of real property held for investment, as set out in Board of Ethics Opinion Nos. 53 and 663, is not mandated by current Chapter 68. The propriety of any ownership interest should be determined on a case-by-case basis, employing the following factors:

(1) whether or not the assessor disclosed his or her ownership interest upon entering City service or promptly upon acquisition, as the case may be;

(2) whether or not the assessor works in the same borough in which the subject property is located; and

(3) whether or not the ownership interest would create any actual or potential conflict of interest otherwise proscribed under any of the provisions of current Chapter 68 of the City Charter.³

³ As an example, if a tax assessor held an interest in a real estate partnership engaged in negotiations with the City, over the acquisition of a City-owned building site, such ownership interest would be prohibited under Charter Section 2604(a)(1)(b) (unless the Board determined, pursuant to the criteria set out in Charter Sections 2604(a)(3) and (a)(4), that such interest did not conflict with the proper discharge of the assessor's official duties). This would be true even if the assessor disclosed his or her interest, and

Accordingly, the Board hereby supersedes Board of Ethics Opinion No. 53 and modifies Opinion No. 663, and establishes a case-by-case test of ownership interests by City tax assessors in accordance with the forgoing analysis.⁴

The Board also notes, in conclusion, that this case-by-case test represents the minimum standard that must be applied, pursuant to Chapter 68, in assessing the propriety of such ownership interests. The Department of Finance may adopt and implement stricter standards, if in its discretion it determines that such standards are appropriate. See Advisory Opinion No. 91-18.

the site in question was not in the borough to which the assessor was assigned.

⁴ Board of Ethics Opinion No. 663 has been superseded only insofar as it prohibits a tax assessor, under any circumstances, from owning real property for investment purposes in the City.

Board of Ethics Opinion No. 663 has not been superseded, and retains its interpretive value under current Chapter 68, insofar as it permits a City Tax Commissioner to own real property for investment within the City, provided that he or she (1) discloses the ownership interest, and (2) does not consider any application for correction of tax assessments on any parcel that he or she owns, or retains a professional relationship with respect thereto, and provided further that the ownership interest does not create any actual or potential conflict of interest proscribed under current Chapter 68 of the City Charter.

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Dated: May 20, 1993